



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

January 16, 1990

Mr. Larry D. Evans
Executive Director
Texas Commission for the Deaf
P. O. Box 12904
Austin, Texas 78711

LO-90-3

Dear Mr. Evans:

You have requested an opinion regarding the interpretation of section 81.017 of the Human Resources Code,¹ which provides:

(a) The [Commission for the Deaf] and each of the following agencies shall adopt by rule a memorandum of understanding to coordinate the delivery of services to deaf persons and to reduce duplication of services:

(1) the Texas Department of Human Services;

(2) The Texas Department of Mental Health and Mental Retardation;

(3) the Texas Employment Commission;

(4) the Texas Department of Health;

(5) the Coordinating Board, Texas College and University System;

(6) the Central Education Agency;

1. The section 81.017 that you ask about was added to the Human Resources Code by Acts 1987, 70th Leg., ch. 343, § 9. Another section 81.017 was added by Acts 1987, 70th Leg., ch 172, § 1, but was renumbered as section 81.019 by the 71st Legislature.

- (7) the Texas Department on Aging;
- (8) the Texas School for the Deaf;
- (9) the Texas Rehabilitation Commission;
- (10) the Texas Department of Corrections; and
- (11) any other state agency involved in providing services to deaf persons.

(b) If gaps in the delivery of services are identified while developing a memorandum, the involved agencies shall formulate in the memorandum methods to reduce or eliminate those gaps.

(c) Not later than the last month of each state fiscal year, the commission and the other agencies shall review their respective memorandums.

You ask the following question about that provision:

Under subsection (a) of this section we would like to know if the legal requirement is that each agency mentioned and TCD must each print the adopted memorandum of understanding (one memorandum of understanding between TCD and each agency) in the Texas Register and therefore adopt it by rule.

Rule-making by state agencies is governed by the Administrative Procedure and Texas Register Act, V.T.C.S. art. 6252-13a. A rule for purposes of administrative procedure is

any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

V.T.C.S. art. 6252-13a, § 3(7).

Under section 81.017 of the Human Resources Code, a memorandum of understanding is intended to prescribe agency policy in regard to services for the deaf. Therefore, even if the words "by rule" were absent from section 81.017(a), each agency that was party to a memorandum of understanding would have to adopt it by rule. It is possible, though, for an agency to adopt the memorandum by rule without publishing the entire text in the Texas Register.

Before an agency adopts a rule, notice of the rule must be published in the Texas Register. V.T.C.S. art. 6252-13a, § 5(a). The notice must include the text of the proposed rule except for any portion omitted as provided in section 6(c). *Id.* § 5(a)(2). Section 6(c) provides:

The secretary of state may omit from the register any information the publication of which he deems cumbersome, expensive, or otherwise inexpedient, if the information is made available in printed or processed form by the adopting agency on application for it, and if the register contains a notice stating the general subject matter of the information and the manner in which a copy of it may be obtained.

With the permission of the secretary of state and in compliance with the provisions of section 6(c), then, an agency could give notice that it was adopting a memorandum of understanding without publishing the entire text of the memorandum in the Texas Register.²

Section 22.011 of the Human Resources Code provides an example of seven agencies adopting a memorandum of understanding without publishing the text seven times. Under section 22.011 seven agencies are required to adopt a

2. We note that section 12 of the bill enacting section 81.017 provided:

(a) The Texas Commission for the Deaf and each agency listed in Section 81.017, Human Resources Code, as added by this Act, must adopt their respective memorandums of understanding not later than September 1, 1988.

Acts 1987, 70th Leg., ch. 343, § 12, at 1765.

memorandum of understanding in regard to services to disabled persons. Section 22.011(d) provides: "Each agency by rule shall adopt the memorandum of understanding and all revisions to the memorandum." A review of the Texas Administrative Code reveals that two of the agencies listed in section 22.011 published notices that contained the text of the memorandum. 25 T.A.C. §§ 72.201, 72.202 (Department of Human Services); 40 T.A.C. § 115.3 (Rehabilitation Commission). The other agencies simply published notices adopting the memorandum by reference. 25 T.A.C. § 1.121 (Department of Health); 40 T.A.C. § 401.45 (Department of Mental Health and Mental Retardation); 40 T.A.C. § 171.3 (Commission for the Blind); 40 T.A.C. § 181.900(b) (Commission for the Deaf); 19 T.A.C. § 89.245 (Central Education Agency).

In summary, each party to a memorandum of understanding under section 81.017 of the Human Resources Code must adopt the memorandum by rule. It is unlikely, however, that the secretary of state would require each party to the memorandum to publish the entire text in the Texas Register.

Very truly yours,

Sarah Woelk

Sarah Woelk, Chief
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Rick Gilpin

Rick Gilpin, Chairman
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APPROVED: OPINION COMMITTEE

RG/SW/lcd

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